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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0580; FRL-9972-02-Region 9]

Contingency Measures for the 1997 PM_{2.5} Standards; California; San Joaquin Valley;

Correction of Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or “Agency”) is taking final action to determine that the deficiency that formed the basis for a disapproval of the contingency measures submitted for the San Joaquin Valley nonattainment area for the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) has been corrected. The effect of this action is to permanently stop the sanctions clocks triggered by the disapproval.

DATES: This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2017-0580. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed on the web site, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Rory Mays, EPA Region IX, (415) 972-3227, mays.rory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or “our” is used, we mean the EPA.

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I. Proposed Action

On October 23, 2017 (82 FR 48944) (herein “proposed rule”), we proposed to determine that the deficiency that formed the basis for a disapproval of the contingency measures submitted for the San Joaquin Valley¹ nonattainment area for the 1997 PM_{2.5} NAAQS (“1997 PM_{2.5} standards”)² has been corrected. We did so based on the Agency’s approval of California regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines (herein, “waiver measures”) into the California State Implementation Plan (SIP), and a finding that the purposes of the contingency measure requirement, as applicable to the San Joaquin Valley based on its initial designation as a nonattainment area for the 1997 PM_{2.5} standards, have been fulfilled.

Our proposed rule provides a detailed background section that describes the relevant NAAQS, area designations, the relevant SIP submittal requirements, and the relevant SIP revisions submitted and either approved or disapproved by the EPA under Clean Air Act (CAA or “Act”) section 110.

¹ The San Joaquin Valley PM_{2.5} nonattainment area is located in the southern half of California’s central valley and includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the valley portion of Kern County. *See* 40 CFR 81.305.

² The EPA promulgated the 1997 PM_{2.5} NAAQS at 62 FR 38652 (July 18, 1997).

In short, under CAA section 172(c)(9), SIPs for areas designated as nonattainment for a NAAQS must be revised to provide for the implementation of specific measures (“contingency measures”) to take effect if the area fails to make reasonable further progress (RFP) or fails to attain by the applicable attainment date. The EPA disapproved the contingency measure element of a set of SIP revisions collectively referred to as the “2008 PM_{2.5} Plan,” which was developed and submitted by California to address SIP requirements triggered by the designation of the San Joaquin Valley as a nonattainment area for the 1997 PM_{2.5} NAAQS.³

In response to the EPA’s disapproval of the contingency measure element of the 2008 PM_{2.5} Plan, California submitted a SIP revision referred to as the “2013 Contingency Measure SIP.” The 2013 Contingency Measure SIP primarily relied upon California’s waiver measures, *i.e.*, California mobile source regulations that had been waived or authorized by the EPA under CAA section 209, to provide post-attainment year emissions reductions equivalent to one year’s worth of RFP.⁴

The EPA approved,⁵ but later disapproved,⁶ the 2013 Contingency Measure SIP in the wake of a court decision⁷ that undermined the basis for the EPA’s approval. The court decision at issue held that waiver measures must be approved into the SIP if California relies upon them to meet CAA SIP requirements, thereby rejecting the EPA’s longstanding practice allowing California SIP credit for waiver measures notwithstanding their absence from the SIP. Our disapproval of the 2013 Contingency Measure SIP became effective on June 13, 2016, and started a sanctions clock for imposition of offset sanctions 18 months after June 13, 2016, and

³ 76 FR 69896 (November 9, 2011) (final action on the 2008 PM_{2.5} Plan).

⁴ One year’s worth of RFP is the yardstick the EPA has cited historically as the approximate quantity of emissions reductions that contingency measures should provide to satisfy CAA section 172(c)(9). *See, e.g.*, 81 FR 58010, at 58066 (August 24, 2016) (final rule implementing the PM_{2.5} NAAQS).

⁵ 79 FR 29327 (May 22, 2014) (final action approving the 2013 Contingency Measure SIP).

⁶ 81 FR 29498 (May 12, 2016) (final action disapproving the 2013 Contingency Measure SIP).

⁷ *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015) (“*Committee for a Better Arvin*”) (partially granting and partially denying petition for review).

highway sanctions 6 months later, pursuant to CAA section 179 and our regulations at 40 CFR 52.31, unless the State submits and the EPA approves, prior to the implementation of the sanctions, a SIP submission that corrects the deficiencies identified in the disapproval action.⁸

Since the disapproval of the 2013 Contingency Measure SIP, we have approved the waiver measures as revisions to the California SIP,⁹ and our approval of them as part of the SIP addresses the specific deficiency that formed the basis of our May 12, 2016 disapproval of the 2013 Contingency Measure SIP. Moreover, since the 2014 attainment year (for the 2008 PM_{2.5} Plan), the waiver measures and related vehicle fleet turnover have achieved post-attainment year emission reductions equivalent to approximately one year's worth of RFP as calculated for the 2008 PM_{2.5} Plan. The waiver measures have thus provided for sufficient progress towards attainment of the 1997 PM_{2.5} standards while a new attainment plan is being prepared.¹⁰ Therefore, in our proposed rule we found that the purposes of the contingency measure requirement, as applicable to the San Joaquin Valley based on the area's designation in 2005 for the 1997 PM_{2.5} NAAQS, have been fulfilled, and we proposed to determine that the deficiency that formed the basis for the disapproval of the 2013 Contingency Measure SIP has been corrected. We are finalizing this determination in today's action.

For a more detailed discussion of the regulatory context and rationale for our action, please see the proposed rule.

II. Public Comments and EPA Responses

⁸ The offset sanction applies to New Source Review (NSR) permits for new major stationary sources or major modifications proposed in a nonattainment area, and it increases the ratio of emissions reductions (*i.e.*, offsets) to increased emissions from the new or modified source, which must be obtained to receive an NSR permit, to 2 to 1. The highway sanction prohibits, with certain exceptions, the U.S. Department of Transportation from approving or funding transportation projects in a nonattainment area.

⁹ 81 FR 39424 (June 16, 2016) and 82 FR 14446 (March 21, 2017).

¹⁰ In response to the EPA's determination of failure to attain the 1997 PM_{2.5} NAAQS, 81 FR 84481 (November 23, 2016), the San Joaquin Valley Unified Air Pollution Control District and California Air Resources Board are preparing a new attainment plan with contingency measures for the 1997 PM_{2.5} NAAQS for the San Joaquin Valley.

The EPA's proposed action provided a 30-day public comment period which ended on November 22, 2017. During this period, we received no comments.

III. Final Action

For the reasons given in our proposed rule and summarized herein, the EPA is making a final determination that the deficiency that formed the basis of our disapproval of the 2013 Contingency Measure SIP for the San Joaquin Valley for the 1997 PM_{2.5} NAAQS has been corrected by the approval of the waiver measures as a revision to the California SIP and the finding that the waiver measures have achieved post-2014 attainment year emissions reductions sufficient to fulfill the purposes of the contingency measure requirement in CAA section 172(c)(9). This final determination permanently stops the sanctions clocks triggered by our disapproval of the 2013 Contingency Measure SIP. *See* CAA section 179(a) and 40 CFR 52.31(d)(5).

In accordance with 5 U.S.C. 553(d), the EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of the determination made herein that a deficiency in a previous SIP approval has been corrected. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rulemaking, however, does not create any new regulatory requirement such that affected parties

would need time to prepare before the rule takes effect. Rather, today's rule makes a determination that has the effect of permanently stopping sanctions clocks triggered by a previous SIP disapproval action. For these reasons, the EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

This action is a determination that a deficiency that is the basis for sanctions has been corrected and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355,

May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60**

days after the date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Nitrogen oxides, Sulfur oxides, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 4, 2017.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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